

When dower is assigned the widow by the heir, or by the sheriff, on a recovery against the heir, there is an implied warranty, and if the tenant in dower is impleaded by one having a paramount title, she may vouch, and recover against the heir, a third part of the two remaining parts of the land, of which she is dowable. *Park on Dower*, 275.

The rule then in the case of jointures made after the marriage, and dower is the same, and if, in either case, the widow is lawfully evicted, she has a right to be provided for out of the remaining estate of the husband; and when it is apparent from the record, as in this case, that the land assigned the widow as dower, has been passed to the third party by the act of the court, and it has a fund under its control, out of which she may be compensated, it would certainly seem equitable, that it should be applied to that object.

I am, therefore, of opinion, that Mrs. Buchanan is not precluded by the proceedings in the Washington County Court from claiming a proportion of the purchase money of these lands.

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[As to the second question, the Chancellor said, the practice of the court had been, to allow widows a proportion of the entire net proceeds of sale, where it could be done without prejudice to the party claiming the original purchase money, or to the holder of other liens contemplated by the law; but that the question had never been deliberately considered, on argument, by his predecessors. He said that, in many of the states, including Maryland, a wife joining her husband in a mortgage, would, at his death, be entitled to dower, subject to the mortgage, notwithstanding a release by him, of the equity of redemption. 4 *Kent*, 44; *Tabele vs. Tabele*, 1 *Johns. Ch. Rep.*, 45; *Titus vs. Neilson*, 5 *Johns. Ch. Rep.* 452.

But that, such claim was confined to the equity of redemption. *Swain vs. Perine*, 5 *Johns. Ch. Rep.*, 482; 4 *Kent*, 39.

He said also, that this equity was represented by the surplus remaining after satisfaction of the mortgage debt; and that Mrs. Buchanan, by joining in the mortgage with her husband,